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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 JERRY CARL BRIMMER,

11 Petitioner,

12 v.

13 NEIL MCDOWELL, Warden,

14 Respondent.
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Case No. EDCV 15-1460-DDP (KK)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

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17 Pursuant to Title 28 of the United States Code, section 636, the Court has
18 reviewed the Petition for a Writ of Habeas Corpus, the records on file, and the
19 Report and Recommendation of the United States Magistrate Judge. The Court has
20 engaged in de novo review of those portions of the Report to which Petitioner has
21 objected. The Court accepts the findings and recommendation of the Magistrate
22 Judge.

23 In his objections to the Report, Petitioner also requests an evidentiary
24 hearing. However, in habeas proceedings, “an evidentiary hearing is not required
25 on issues that can be resolved by reference to the state court record.” Totten v.
26 Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d
27 1158, 1173 (9th Cir. 2005). “It is axiomatic that when issues can be resolved with
28 reference to the state court record, an evidentiary hearing becomes nothing more

1 than a futile exercise.” Totten, 137 F.3d at 1176. Here, the Magistrate Judge
2 concluded all of Petitioner’s claims could be resolved by reference to the state
3 court record. Accordingly, the Court denies Petitioner’s request for an evidentiary
4 hearing.

5 Also in his objections to the Report, Petitioner objects to the Order denying
6 appointment of counsel and requests appointment of counsel. However, “the sixth
7 amendment right to counsel does not apply in habeas corpus actions.” Knaubert v.
8 Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). A district court is authorized to
9 appoint counsel for a habeas petitioner when it determines the interests of justice
10 require such appointment (18 U.S.C. § 3006A(a)(2)(B)); however, “[u]nless an
11 evidentiary hearing is required, the decision to appoint counsel is within the
12 discretion of the district court.” Knaubert, 791 F.2d at 728. “Indigent state
13 prisoners applying for habeas corpus relief are not entitled to appointed counsel
14 unless the circumstances of a particular case indicate that appointed counsel is
15 necessary to prevent due process violations.” Chaney v. Lewis, 801 F.2d 1191,
16 1196 (9th Cir. 1986). Accordingly, the Court finds appointment of counsel is not
17 needed to avoid a due process violation and Peittioner’s request for appointment of
18 counsel is denied.

19 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the
20 Petition for a Writ of Habeas Corpus; and (2) dismissing this action with prejudice.

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22 Dated: April 5, 2016



23 HONORABLE DEAN D. PREGERSON
24 United States District Judge
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